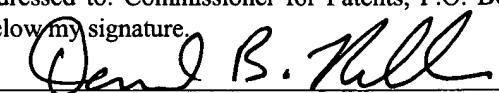


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Daniel B. Ruble
Registration No. 40,794

DATE : July 13, 2005



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Edlein et al

Group Art Unit: 1772

Serial No.: 09/657,679

Examiner: S. Nolan

Filing Date: September 8, 2000

Docket No.: D-43378-01

Title: PRINTED ANTIFOG FILM

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants request review of the final Office Action mailed March 16, 2005. The period for response has been extended until July 18, 2005 by the enclosed Petition for Extension of Time. No amendments are filed with this request.

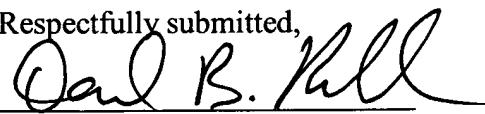
This Request is being filed with a Notice of Appeal.

This Request is made for the reasons stated in the Remarks section beginning on page 2 of this Request.

Sealed Air Corporation
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864/433-2496

Respectfully submitted,



Daniel B. Ruble
Registration No. 40,794

Date: July 13, 2005

Remarks

I. The Office Action failed to provide a proper basis for an indefiniteness rejection.

Claims 1-26 and 56-61 were rejected under 35 U.S.C. 112, second paragraph as indefinite. Applicants respectfully submit that the existing claim language is clearly understandable from the perspective of one of skill in the art.

The Office Actions fail to identify any claim language that is confusing, indefinite, or subject to misunderstanding by one of skill in the art. Rather, to support the indefiniteness rejection, the Office Action states that: 1) the claims "do not correspond to the showing presented" in the specification and 2) "the combination discussed in the specification is not the same invention as the film/ink combinations recited" in the claims. (Office Action mailed March 16, 2005 at page 4, fourth and last paragraphs.)

The basis for indefiniteness is not whether the claimed invention corresponds to the specification, nor whether the claimed invention is the same as a combination recited in the specification. Rather, whether a claim is indefinite "depends on whether one of skill in the art would understand what is claimed, in light of the specification." MPEP 2173.05(b). The present claim language is understandable to one of skill in the art.

II. The Office Action improperly compared the evidence of non-obviousness to a *combination* of prior art references, rather than to the closest prior art reference.

A. Kuo combined with Curatolo.

Claims 1-10, 12-13, 16-30, 32-35, 37-38, and 40-61 were rejected under 35 U.S.C. 103(a) as obvious in view of U.S. Patent 5,962,092 to Kuo combined with U.S. Patent 5,804,301 to Curatolo.

Applicants traversed these obviousness rejections by directing the Examiner's attention to the comparative data in the Application (page 33, line 27 to page 36, line 15) as objective evidence establishing non-obviousness. (Response mailed Dec. 8, 2004 at pages 18-20.)

In response, the Examiner stated that the Applicants' evidence of non-obviousness does not "overcome the references *combined* teachings because [the evidence does] not convincingly demonstrate that the claims recite something that is different in kind from what the *combined* teachings suggest." (Office Action mailed March 16, 2005 at page 5, third paragraph, emphasis added.)

However, to rebut a *prima facie* case of obviousness, Applicants are not required to make a showing of unexpected results compared to a *combination* of two references (e.g., Kuo and Curatolo). MPEP §716.02(e)(III). To impose such an obligation "would be requiring comparison of the results of the invention with the results of the invention." *Id.* (quoting *In re Chapman*, 148 USPQ 711 (CCPA 1966)).

Rather, Applicants are required to show unexpected results compared to the closest prior art. MPEP §716.02(e). Applicants have done so. Applicants provided the ghosting results for the invention compared to the ghosting results for conventionally printed antifog films, such as those disclosed by the Kuo reference. ("Ghosting" is a term of art explained in the Application, page 2, lines 4-19.)

Lastly, Applicants respectfully submit that the Examiner has failed to point out with sufficient specificity why the evidence of non-obviousness is insufficient to overcome the obviousness rejection. The Examiner "must specifically explain why the evidence is insufficient. General statements [such as those made on page 5 of the Office Action mailed March 16, 2005] . . . without an explanation supporting such findings are insufficient." MPEP §716.01.

B. Kuo combined with Elms.

Claims 11, 14-16, 36, 39, 41, 77, 87, and 93-96 were rejected under 35 U.S.C. 103(a) as obvious in view of Kuo combined with U.S. Patent 3,976,614 to Elms.

The arguments made in the previous section with respect to the rejection based on Kuo combined with Curatolo apply equally to the rejection based on Kuo combined with Elms, and in the interest of brevity will not be repeated here.

C. Kuo combined with Fairbanks.

Claims 27-30, 32-35, 37-38, 40-55, 62-76, 78-83, 85-86, 88-92, 95, 97-102, and 104-106 were rejected under 35 U.S.C. 103(a) as obvious in view of Kuo combined with U.S. Patent 4,008,115 to Fairbanks.

The arguments made in the previous section with respect to the rejection based on Kuo combined with Curatolo apply to the rejection based on Kuo combined with Fairbanks. In the interest of brevity, those remarks will not be repeated here.

III. Conclusion

For the foregoing reasons, Applicants respectfully request that the rejections be reversed.